

*James Morgan, Executor in* | *Elizab. Digby, Administratrix*  
*Trust for the Children of* | *of John Digby, Respondent.*  
*Michael Rackett, Appellant.*

## The Appellants C A S E.

**I**N the Year 1686, the said *Michael Rackett* and *John Digby*, with *Phineas Bowles*, became Partners in certain *Glass-Works*, and the said *Mr. Digby* being then under some uneasy Circumstances in the World did to protect his Estate, by Deed Dated 30th of *Octo.* 1688. (for the Consideration therein mentioned) Assigned all his Interest to *Rackett* without any Proviso, Trust, or Condition for Redemption thereof, and soon after went beyond Sea, and *Rackett* with *Bowles* carried on the Undertaking until 1692. and then they Sold their Joynt-Stock, (whereby that Partnership was Determined) and also then Sold Two *Glass-Works* of their own wherein *Digby* had no Interest, (but *Rackett* had a sepearte Stock therein, to the Value of 1799 l. 10 s. and *Bowles* a sepearte Stock to the Value only of 402 l. 11 s. 04 d.) To *Craven Howard*, Esq; and others, for 11161 l. 15 s. 10 d. and thereupon by Indenture Dated April 1st, 1692. It was agreed that all the said Works and Stock, as well those in Partnership with *Digby* as those of their own, together with other *Glass-Works* and Stock of one *Hookes* should be Vested in *Howard* and others, and that the same should be divided into 1440 Shares, and that 356 of the said Shares called *Gift-Shares*, should be Transferred to *Bowles* for the Benefit of himself and *Rackett*, which was accordingly done, 45 only of which afterwards were Transferred to *Rackett*, who in Consideration thereof Covenanted not to be concerned in any *Glass-Works* upon Forfeiture of 10 l. per Day.

Note, These Gift-Shares were only intended for the Benefit of *Rackett* and *Bowles*, in such Proportions, and no other Proprietors, to have Interest therein.

THAT at a Meeting in *April*, 1692. for the better Disposal of 364 Shares, called *Stock-Shares*, wherein *Digby* was concerned; It was agreed that each of the Proprietors should take so many as he thought fit, at 40 l. per Share, and accordingly *Bowles* for himself and Partners Subscribed for 66 towards Payment for their Stock, of which Six were Sold, and the Money accounted for, and Forty were Transferred to *Rackett* for himself and *Digby*, whereby there were 20 due to each.

THAT in 1692, *Digby* returned into *England*, and was made acquainted with *Rackett's* selling the said Stock, and accepting the said Shares; and in 1694, made up an Account thereof with him, and from the time of his Return to the time of *Rackett's* Death was very conversant with him and frequently at his House, and privy to his Selling and Disposing of his own Shares, and during all *Rackett's* Life, *Digby* never pretended to be any way Intitled to any the Money made by *Rackett* by Profit or Sale of any such Shares, as he sold as his own, after the return of the said *Digby*.

THAT in 1697, *Rackett* dyed, having made his Will, and the Appellant and one *Edmund Perkins* (since Deceased) and others, Executors in Trust for the Children of the said *Rackett*, but the Appellant and *Perkins* only proved the Will, and after *Rackett's* Death, *Digby* pretending to Claim some Right or Interest in some Part or Porportion of the said Shares so sold by *Rackett*, and that there was an Account depending between him and *Rackett* for Moneys by *Rackett* Received and Paid on Account of the said Stock since *May* 1694. The Appellant for clearing the said Matters, and to avoid any Suits, permitted *Mr. Digby* and his Agents to inspect all *Mr. Rackett's* Books of Accounts, and accordingly an Account was drawn out from the said Books of all *Mr. Rackett's* Receipts and Payments, upon which including the Ballance of the Account of *May* 1694. there appeared due to *Mr. Digby* 415 l. 3 s. 7 d. which notwithstanding he had made such absolute Assignments of his Interest in the said Stock to *Rackett*, yet the Appellant offered to Pay and to transfer to him his Proportion of the said Shares remaining Unfold.

THAT *Digby* having kept his 20 Shares till they were come to little or no Value, and upon perusal of *Rackett's* Books, finding that *Mr. Rackett* had disposed of most of his Shares to Advantage, as *Mr. Rackett* had often pressed *Digby* to do for his Shares; yet hoping (*Rackett* being Dead) to gain an equal Benefit, notwithstanding his own Remissness before. He in 1700, Exhibited his Bill for a discovery of the Trust as he Pretended, and which was never denied by the Appellant, and for an Account of the Profits made by *Rackett* since the Partnership determined, and to have his Proportion thereof, and the Cause coming to be Heard 29th *June*, in the Fourth Year of Her Majesty's Reign. It was referred to a Master, to see how many Shares in the said Stock, came to *Rackett's* Hands, upon his own and *Digby's* Joynt-Accounts, and how many upon his own sepearte Account, and to see what had been made thereof; and the Master accordingly pursuant to the said Decree, and several subsequent Orders of the said Court, made several Reports, and the Cause coming again at several times to be Heard upon the said Reports, and Exceptions taken by both Sides thereto, the Appellant was and is ordered to pay (accounting for Interest) to the 20th *May* last, the Sum of 1693 l. 18 s. 00 d. And the Respondent by the said Orders and Decrees is let into the equal Proportion with *Rackett* of the said 45 *Gift-Shares* so transferred to him upon his own private Account as aforesaid; and the Appellant is also to pay the Respondent 546 l. for a Moiety of 37 Shares Sold by *Rackett*, when *Digby* might have Sold all his Share if he had thought fit, and also 166 l. 00 s. 11 d. for a Moiety of several Sums by him taken for refusal of Shares which was upon *Rackett's* own private Account and Risque, and also with 239 l. 5 s. for a Moiety of the pretended Value of 33 Shares Transferred to one *Blunt* and others, whereof the Appellants Testator had no manner of Benefit. And by a subsequent Order or Decree made the 18th day of *June* last, the Appellant was Ordered to pay the said Sum of 1693 l. 18 s. with further Interest at such times as thereby appointed, and in Obedience to which the said Appellant hath been Compelled to pay 1050 l. in partt hereof, or otherwise was thereby to stand Committed to the Prison of the Fleet.

From which several Orders and Decrees the Appellant has Appealed.

For that the Respondant Intestate, having the full Value of his Interest in the said Stock, Answered to him, and the said 45 Shares being given to *Rackett* (as other Shares were to several other Persons) for particular Services done to the New Company. And in Consideration of his restraining himself from being concerned in any other *Glass-Work*, *Digby* ought not to have been let into any Proportion thereof, or at least ought not to have been let into an equal Proportion with *Rackett*, who had a sepearte Stock of his Own of a Considerable Value Sold at the same time, and no other Allowance made for the same.

Also, for that the Respondent ought not to have been let into any Part of the Money by *Rackett* taken for Refusal of Shares, the same being taken upon his own private Risque and Account, nor of the Money for which he Sold any of his own Shares, the Respondents Testator having obstinately refused to Sell his Shares when they might have been Disposed of to the same Advantage.

And also, for that *Rackett* who was only a Trustee, and as such, ought only to Account for what he actually Received, ought not to have been Charged with any Thing, for, or in respect of the said 33 Shares, nothing in Truth being Received thereon, nor were the same at that time of any Intrinsic Value, nor ought the Appellant to have been Charged with Interest for the Ballance of the Account of *May* 1694, from that time the same being liable to be, and accordingly was Drawn out by *Digby* when he thought fit, and *Rackett* was only in the Nature of his Cashire, and had no Allowance for his Trouble and Pains, tho by his Care and Management during the absence of *Digby*, the Joint-Stock was advanced from 4000 l. to 9059 l. 14 s. 6 d. whereby *Digby* for his Share gained, 1686 l. 11 s. 6 d.

For which Causes, and several other Reasons, It is humbly hoped Your Lordships will see Just Cause to Reverse the said Decree.

SIM. HARCOURT.